IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2764 OF 2005

Union of India & ors. Petitioners
vs.
Shri H.N.Poojary & ors. Respondents

Mr.V.S.Masurkar with Mrs.N.V.Masurkar i/b.Mr.T.C.Kaushik
for the petitioners.

Mr.S.V.Marne for respondent no.1.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 26th September, 2006

P.C.

Respndent no.1 had moved CAT by an Original Application. His grievance was to the promotion of respondents 2 eventhough earlier Respondent no.2 had declined to accept the promotion.

The petitioners herein have framed rules, of which rule 17.12 is relevant and is reproducded herein:

> "17.12 When a Government employee does not want to accept a promotion which is offered to him he may take a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the

> persons who initially refused promotion, on every occasion on which a vacancy arises, during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. On the eventual promotion to the higher grade, such Government servant will lose seniority vis-a-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or otherwise. The above-mentioned policy will not apply where ad hoc promotions against short term vacancies are refused.
>
> . [In cases where the reasons adduced by the officer for his refusal for promotion are not acceptable to the appointing authority, then he should enforce the promotion of the offer and in case the officer still refuses to be promoted, then even disciplinary action can be taken against him for refusing to obey his order.]"

. From reading of the said rule, it is abundantly clear that if the Government employee who has been offered promotion does not want to accept the promotion which is offered, such employee may make written request that he may not be promoted and such request would be considered by the appointing authority taking relevant aspects into consideration. In case the request is accepted, it is subject to the condition that no fresh offer for appointment or promotion shall be made for a period of one year from the date of refusal of first promotion or till a next vacancy arises whichever is later. In the instant case, respondent no.2 herein received the offer

of promotion dated 19.2.2004 and by communication of 1.3.2004 requested the appointing Authority that she was unable to accept the promotion and that she may be given an opportunity for the post of Administrative Officer in Mumbai as and when vacancy arises. Similarly respondent no.3 by communication of 30.3.2004 intimated to the appointing Authority that he was not in a position to accept the post of Administrative officer and that he be given opportunity in Mumbai as and when vacancy arises. Though respondents 2 and 3 have refused the offer of promotion by order of 11.10.2004 of Deputy Director (Administration) Mr.K.K. Majumdar, strangely in para 1 of office memorandum set out that respondents 2 and 3 had never refused the promotion to the grade of Administrative Officer and had only requested for their posting at Mumbai as and when vacancy arises. All that we can say regretfully is that, the said officer either does not understand the English language or conveniently did not refer to the two letters of respondents 2 and 3 wherein it was set out that they are refusing promotion. In our opinion, this was nothing but a blatant act for extraneous consideration by the said officer to favour respondents 2. After so saying the representation of the respondent no.1 was rejected.

2. Thereafter by order dated 21.5.2004 though respondents 2 had refused promotion, respondent no.3 was

offered promotion by communication dated 21.5.2004.

3. The learned Tribunal considered this aspect and the rules in force has correctly arrived at a conclusion that respondent no.2 could not have been granted promotion in view of the rule. We find that order does not suffer from any error of law apparent on the face of the record and consequently no case is made out for interference. It may be mentioned that the name of the respondent no.1 was in the extended panel at serial no.2 below that of respondents 2 and 3.

4. Petition stands dismissed accordingly. No order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)